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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Jose Division

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SWISH MARKETING, INC., a  
corporation,

MARK BENNING, individually and as an  
officer of SWISH MARKETING, INC.,

MATTHEW PATTERSON, individually  
and as an officer of SWISH  
MARKETING, INC., and

JASON STROBER, individually and as  
an officer of SWISH MARKETING,  
INC.,

Defendants.

Case No. C09-03814 RS

Hearing Date: TBD  
Hearing Time: TBD  
Courtroom: 4, 5<sup>th</sup> Floor

**[xxxxxxx] STIPULATED  
ORDER TO FILE AMENDED  
COMPLAINT UNDER  
TEMPORARY SEAL**

**ORDER TO FILE UNDER TEMP. SEAL - C09-03814 RS**

1 **I. INTRODUCTION AND PROCEDURAL HISTORY**

2 The Federal Trade Commission (“FTC”) filed a complaint (Dkt. #1) in this matter  
3 on August 19, 2009. On February 22, 2010, this Court issued an order granting  
4 Defendant Mark Benning’s motion to dismiss the FTC’s complaint as to him. (Dkt. #60)  
5 In the order, the Court granted the Commission leave to amend its Complaint but did not  
6 set a deadline by which it needed to do so. On March 8, 2010, Defendants Swish  
7 Marketing, Inc. (“Swish”), Matthew Patterson, and Jason Strober, but not Defendant  
8 Benning, filed an administrative motion, requesting that the Court impose a filing  
9 deadline for an amended complaint. (Dkt. #64) On March 12, 2010, the Court entered an  
10 order setting a deadline of April 5, 2010, for the FTC to file an amended complaint as to  
11 Defendant Benning. (Dkt. #69)

12 The parties now stipulate to the filing of the FTC’s First Amended Complaint  
13 under a temporary seal. The amended complaint may contain certain material submitted  
14 by the defendants pursuant to, or in lieu of, compulsory process. Pursuant to 16 C.F.R.  
15 4.10(g), such material may be disclosed by the FTC in court proceedings. Prior to  
16 disclosure of such material in a proceeding, the FTC must afford the submitter “an  
17 opportunity to seek an appropriate protective or in camera order.” *Id.* The defendants  
18 will not have had an opportunity to review the contents of the First Amended Complaint  
19 until it has been filed with the Court herewith. To allow the defendants an opportunity to  
20 seek an appropriate protective order over protected material if they so desire, the parties  
21 agree to the procedure set forth below.

22 **II. PROPOSED PROCEDURE FOR SEEKING AN APPROPRIATE**  
23 **PROTECTIVE ORDER**

24 So that the defendants may seek an appropriate protective order over material that  
25 they submitted to the FTC pursuant to, or in lieu of, compulsory process that is contained  
26 in the FTC’s First Amended Complaint, the parties agree to the filing of the First  
27 Amended Complaint under temporary seal, as follows:

- 28 1. The defendants shall have until April 19, 2010 to file a motion with the

1 Court, seeking an appropriate protective order over material contained in  
2 the FTC's First Amended Complaint, pursuant to 16 C.F.R. 4.10(g);

3 2. The FTC shall have until May 3, 2010, to respond to any such motion filed  
4 by any defendant;

5 3. If no defendant has moved for a protective order by April 19, 2010, then the  
6 seal shall automatically be lifted, with no further action required by the  
7 Court or any party, and the FTC's First Amended Complaint shall be placed  
8 on the public record; and

9 4. If any defendant has moved for a protective order by April 19, 2010 as to  
10 any portion of the First Amended Complaint, then the Complaint shall  
11 remain under seal until the Court has issued its ruling on the defendants'  
12 motion/s.

13 **IV. CONCLUSION**

14 The parties respectfully request that the Court temporarily seal the FTC's First  
15 Amended Complaint as set forth above.

16  
17 Respectfully submitted,

18  
19 DATED: April 5, 2010

/s/ Lisa D. Rosenthal  
LISA D. ROSENTHAL  
KERRY O'BRIEN  
EVAN ROSE

Attorneys for Plaintiff  
FEDERAL TRADE COMMISSION

23 (The filer attests that concurrence in the filing of this document has been obtained  
24 from each of the other signatories.)

25  
26 DATED: April 5, 2010

/s/ Michael A. Thurman  
MICHAEL L. MALLOW  
MICHAEL A. THURMAN  
LOEB & LOEB LLP

Attorneys for Defendants  
SWISH MARKETING, INC. and  
MATTHEW PATTERSON

DATED: April 5, 2010

/s/ Brian Grossman  
BRIAN GROSSMAN  
TESSER & RUTTENBERG

Attorneys for Defendants  
SWISH MARKETING, INC.,  
MATTHEW PATTERSON, and  
JASON STROBER

DATED: April 5, 2010

/s/ Donald P. Gagliardi  
DONALD P. GAGLIARDI  
ELIZABETH D. LEAR  
BERGESON, LLP

Attorneys for Defendant  
MARK BENNING

PURSUANT TO STIPULATION, IT IS SO ORDERED:

DATED: 4/5/10

  
\_\_\_\_\_  
RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE